

APPENDIX

Judgment of the Civil District Court for the Parish of Orleans

CIVIL DISTRICT COURT

IN AND FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

DIVISION OF LOUISIANA

No. 430-566

Docket 4

THELMA LEVY, Administratrix of the Estate of LOUISE LEVY,
and as Tutrix for the Minors, RONALD BELL, REGINA
LEVY, CECILIA LEVY, LINDA LEVY and AUSTIN LEVY.

vs.

THE STATE OF LOUISIANA through the CHARITY HOSPITAL OF
LOUISIANA AT NEW ORLEANS BOARD OF ADMINISTRATORS and
W. J. WING, M.D. and A. B. C. INSURANCE COMPANIES.

Filed:

Deputy Clerk

THIS CAUSE CAME ON for hearing on January 21, 1966
on the various exceptions filed by the defendants herein.

Present:

Mr. Lawrence J. Smith

Attorney for Plaintiffs

Mr. A. J. Levy

Attorney for Plaintiffs

Mrs. Dorothy Wolbrette

Assistant Attorney General

Attorney for the State of Louisiana

and representing the Attorney

General

Mr. Ingard O. Johannessen

Attorney for the Charity Hospital of

Louisiana

Mr. William A. Porteous, III

Attorney for Dr. Willard J. Wing and

Interstate Fire and Casualty Co.

THIS CAUSE CAME ON for additional hearing on January 28, 1966.

Present:

Mr. Lawrence J. Smith

Attorney for Plaintiffs

Mr. William A. Porteous, III

Attorney for Dr. Willard J. Wing and

Interstate Fire and Casualty Co.

CONSIDERING the original petition and the three supplemental petitions filed herein, the various exceptions filed by the parties defendant and the legal memorandum submitted by counsel, the legal arguments advanced in open

Court and the stipulations of counsel and for reasons orally assigned;

IT IS ORDERED, ADJUDGED AND DECREED (1) that the State of Louisiana is dismissed from this action, (2) that the exceptions brought on behalf of Charity Hospital of Louisiana are continued indefinitely, (3) that the exceptions brought on behalf of Dr. Willard J. Wing and Interstate Fire and Casualty Company are sustained and the action of all plaintiffs as against Dr. Willard J. Wing and Interstate Fire and Casualty Company is dismissed.

JUDGMENT READ, RENDERED AND SIGNED in Open Court this 31st day of January 1966.

New Orleans, Louisiana

PAUL P. GAROFALO

Judge

Opinion of the Court of Appeal

THELMA LEVY, in Her Capacity as Administratrix of the Succession of LOUISE LEVY, and as the Tutrix of and on Behalf of the Minor Children of LOUISE LEVY, Said Children Being: RONALD BELL, REGINA LEVY, CECILIA LEVY, LINDA LEVY and ASTIN LEVY,

v.

THE STATE OF LOUISIANA Through the CHARITY HOSPITAL OF LOUISIANA AT NEW ORLEANS BOARD OF ADMINISTRATORS and W. J. WING, M.D. and A. B. C. INSURANCE COMPANIES.

No. 2355

Court of Appeal of Louisiana

FOURTH CIRCUIT

Nov. 7, 1966

Rehearing Denied Dec. 5, 1966

Writ Refused Jan. 20, 1967

Before YARRUT, SAMUEL and CHASEZ, JJ.

YARRUT, Judge.

This is an appeal from a judgment maintaining exceptions of no right or cause of action to a suit filed on behalf of minor children for the wrongful death of their mother.

The children are admittedly illegitimate and have never been legitimated.

Plaintiff-Appellant, on behalf of the children, contends that the denial of this right to illegitimate children solely because of their status is, as to them, a denial of due process and equal protection under law under both the Louisiana and United States Constitutions (La. Const., Article 1, Section 2; U.S. Const. 5th and 14th Amendments), and because it bears no real or substantial relation to the general health, morals or welfare of the people, citing *Reynolds v. Louisiana Board of Alcoholic Beverage Control*, 249 La. 127, 185 So.2d 794.

The case of *Reynolds v. Louisiana Board of Alcoholic Beverage Control*, cited *supra*, was based on the fact that the statute bore no substantial relation to the general health, morals, or general welfare of the people. Denying illegitimate children the right to recover in such a case is actually based on morals and general welfare because it discourages bringing children into the world out of wedlock.

The action for wrongful death is purely statutory in Louisiana, being found in Article 2315 of the Revised Civil Code of Louisiana.

Our jurisprudence is well established that "child" means legitimate child, and that recovery is denied both to illegitimate and putative children for the wrongful death of a parent. *Board of Com'r's v. City of New Orleans*, 223 La. 199, 65 So.2d 313; *Sesostris Youchican v. Texas & P. Ry. Co.*, 147 La. 1080, 86 So. 551; *Jackson v. Lindlom*, La.App., 84 So.2d 101; see also *Chivers v. Couch Motor Lines, Inc.*, La.App., 159 So.2d 544; *Scott v. La Fontaine*, La.App., 148 So.2d 780; *Buie v. Hester*, La.App., 147 So.2d 733; 14 *Tul.L.Rev.* 613.

That an illegitimate child was dependent upon the deceased parent for support makes no difference. *Board of Com'rs v. City of New Orleans*, *supra*.

Mere acknowledgment will not serve to cure a defect in legitimacy. *Lynch v. Knoop*, 118 La. 611, 43 So. 252, 8 L.R.A., N.S., 480; *Scott v. La Fontaine*, *supra*.

Since there is no discrimination in the denial of the right of illegitimate children to recover based on race, color, or creed, we can find no basis for the contention of unconstitutionality, and can find no jurisprudence of our courts to such effect. The judgment appealed from is affirmed; Appellant to pay all costs of this appeal.

Judgment affirmed.

**Denial of Certiorari by the Supreme Court
of Louisiana**

250 La. 25

**THELMA LEVY, in her capacity as administratrix of the
succession of LOUISE LEVY, etc.**

v.

**THE STATE OF LOUISIANA Through the CHARITY HOSPITAL OF
LOUISIANA AT NEW ORLEANS BOARD OF ADMINISTRATORS
et al.**

No. 48518

Jan. 20, 1967

**In re: Thelma Levy, etc., applying for certiorari, or
writ of review, to the Court of Appeal, Fourth Circuit,
Parish of Orleans. 192 So.2d 193.**

**Writ refused. No error of law in the judgment of the
Court of Appeal.**